



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

201012055

DEC 29 2009

Uniform Issue List: 408.03-00

SE: T: EP: RA: T2

Legend:

Taxpayer A = ***

Individual B = ***

IRA X = ***

Amount 1 = ***

Financial Institution A = ***

Company B = ***

Trust Account B = ***

Financial Advisor A = ***

Date 1 = ***

Date 2 = ***

Date 3 = ***

Date 4 = ***

Date 5 = ***

Date 6 = ***

Date 7 = ***

Date 8 = ***

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Dear * * *:

This is in response to a request that was submitted on your behalf by your authorized representative dated July 3, 2009, as supplemented by correspondence dated September 3, 2009 and October 16, 2009, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer A, age 81, represents that he received a distribution from IRA X totaling Amount 1. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to the error of an employee of Financial Institution A. Taxpayer A further represents that Amount 1 has not been used for any other purpose.

Taxpayer A owns an Individual Retirement Arrangement (IRA), IRA X, which is maintained by Financial Institution A. Taxpayer A represents that Financial Advisor A, a Senior Investment Associate with Company B, a division of Financial Institution A, has provided financial advice to him for many years, including assisting him and his spouse, Individual B, with the annual required minimum distributions from their IRAs maintained by Financial Institution A.

On Date 1, Taxpayer A submitted to Financial Institution A a form requesting a distribution of Amount 1, which was his required minimum distribution for 2008 from IRA X. On the same date, Individual B, who is also over 70 ½ years old, submitted a form to Financial Institution A, requesting a distribution of the required minimum distribution for 2008 from her individual retirement arrangement. Each form requested that the distribution be deposited directly in Trust Account B.

A distribution was made on behalf of Individual B on Date 2. Because no distribution was made on behalf of Taxpayer A on Date 2, Financial Advisor A advised Taxpayer A to submit a second distribution form. Financial Advisor A completed the distribution form on behalf of Taxpayer A, and instructed him to sign and return it to Financial Institution A. She told him that she would discard the form if she determined prior to submitting it for processing that the original requested distribution had been made. Immediately following the conversation, Individual A went on a medical leave of absence which lasted until Date 6.

Taxpayer A represents that on Date 4, he returned the second distribution form to Financial Institution A. The form was processed immediately and Amount 1 was distributed from IRA X and deposited directly in Trust Account B on Date 5. Unbeknownst to Taxpayer A, a distribution of Amount 1 had been made from IRA X

pursuant to the original distribution request and deposited directly in Trust Account B on Date 3.

Financial Advisor A has submitted a letter in which she confirmed that it was wrongly assumed that the first distribution form was missing, prompting the completion of a second distribution request.

Taxpayer A represents that he first became aware of the duplicate distribution when he received Form 1099-R for 2008 from Financial Institution A that was mailed on Date 7 and showed that twice Amount 1 had been distributed. Date 7 is outside the 60-day period. Upon receipt of the Form 1099-R, Taxpayer A immediately contacted Financial Advisor A, who re-deposited Amount 1 into IRA X on Date 8.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement with respect to the second distribution of Amount A, contained in section 408(d)(3) of the Code in this instance.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if—

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

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Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Revenue Procedure 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation you submitted is consistent with the assertion by Taxpayer A that his failure to accomplish a timely rollover was due to the error of an employee of Financial Institution A.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount 1 from IRA X.

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

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If you wish to inquire about this ruling, please address all correspondence to *** (ID ***) at ***. Please address all correspondence to SE:T:EP:RA:T2.

Sincerely yours,



Donzell H. Littlejohn, Manager,
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

cc. ***